



Appeal Decision

Site visit made on 22 May 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 June 2024

Appeal Ref: APP/Q2371/C/23/3322950

Land off Greens Lane, Downholland, Lydiate

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andrew Molyneux against an enforcement notice issued by Lancashire County Council.
- The notice was issued on 5 May 2023.
- The breach of planning control as alleged in the notice is the construction of an agricultural irrigation reservoir.
- The requirements of the notice are 1. Cease all export of minerals (soil and sand) from within the land edged red on plan ref LCC1 attached to this notice; 2. Within the land edged red on plan ref LCC1 attached to this notice, grade out all side slopes of the excavation and redistribute all stockpiles of soil and sand across the base and sides of the excavation to ensure that no side slope of the excavation exceeds a gradient of 1:2; and 3. Seed the graded surface with an appropriate agricultural grass seed mix.
- The periods for compliance are 1 day for requirement 1, two months for requirement 2, and three months for requirement 3.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended).

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of an agricultural irrigation reservoir on land off Greens Lane, Downholland, Lydiate as shown on the plan attached to the notice and subject to the following conditions:

1. The development shall be completed within twelve months after the last date of discharge of conditions 3, 4, 5, 10 and 11.
2. The development shall be carried out in accordance with submitted plans and documents and all details approved pursuant to conditions of the permission.
3. No further excavation works shall be carried out until a plan showing the base contours of the reservoir have been submitted to and approved in writing by the County Planning Authority. No excavation works shall be carried out below the levels shown on the approved plan.
4. No further excavation works shall be carried out until a landscaping scheme has been submitted to and approved in writing by the County Planning Authority. The scheme shall include details of any mounding around the reservoir, cultivation works for seeding, seed mixes, and tree and shrub planting. The approved scheme shall be implemented in the first

planting season following completion of excavation works and thereafter maintained for a period of five years including replacement of dead and dying trees and shrubs.

5. No further excavation works shall be carried out until a traffic management plan (TMP) has been submitted to and approved in writing by the County Planning Authority. The TMP shall include details of routing of heavy goods vehicles to prevent these vehicles passing each other in opposite directions on Greens Lane and Eager Lane.

6. Measures shall be taken to ensure that no mud or other material is deposited on public highways by heavy goods vehicles leaving the site.

7. No more than 20 heavy goods vehicles associated with the exportation of excavated material shall leave the site in any day. All heavy goods vehicles transporting excavated material shall be securely sheeted.

8. No heavy goods vehicles shall enter or leave the site outside 0800 to 1600 hours on weekdays. There shall be no heavy goods vehicle activity at weekends or on public holidays.

9. Any fuel storage containers on the site shall be sited on an impervious surface with bund walls; the bunded areas shall be capable of containing 110% of the container or containers' total volume and shall enclose within them all fill and draw pipes, vents, gauges and sight glasses. There must be no drain through the bund floor or walls. Double skinned tanks may be used as an alternative only when the design and construction have first been approved in writing by the County Planning Authority.

10. No further excavation works shall be carried out until cross sections have been submitted to and approved in writing by the County Planning Authority, to demonstrate that the construction of the reservoir does not adversely impact the structural integrity or stability of the canal infrastructure. The cross sections shall show the slope geometry and invert levels of the reservoir relative to the canal infrastructure and any measures to ensure the canal would be safeguarded.

11. No further excavation works shall be carried out until a method statement has been submitted to and approved in writing by the County Planning Authority. The method statement shall set out a package of works to be undertaken to ensure that the drainage ditch along the north-east boundary of the site to the canal corridor shall not cause long-term stability concerns. The approved method statement shall be carried out in full prior to the reservoir being first brought into use.

Background information

2. The irrigation reservoir that is the subject of the enforcement notice has been partly created on an agricultural unit of about 41 hectares. The part created reservoir lies between fishing lakes owned by the Appellant and the Leeds-Liverpool Canal. Access to the site is along a gravel track off Greens Lane.

3. Excavations commenced following a determination by West Lancashire Borough Council that prior approval was not required for construction of the reservoir because the development, in principle, is permitted by Class A of Part 6 of Schedule 2 of The Town and Country (General Permitted Development) Order 2015

(the 2015 Order). This permitted development is subject to the proviso that any extracted material is not moved off the agricultural unit.

4. Excavated material has been moved off the agricultural unit in heavy goods vehicles and the Appellant accepts that completion of the reservoir would require further removal from the unit of excavated material. Officers of the County Council were made aware of the heavy goods vehicle movements by local residents living on Greens Lane and on Eager Lane, which the heavy goods vehicles must use for access to and from the site. The County Council determined that planning permission was required for the creation of the reservoir and to prevent further heavy goods vehicle movements they issued the enforcement notice and a stop notice. On receipt of these documents, excavation works ceased.

5. In the conclusions section of the County Council's appeal statement, it is stated that "...concerns are raised regarding the Appellant's intended method of construction and the impacts on highway safety and local amenity that would arise". But the County Council's highway concerns, as considered in the statement, are not with regard to safety but with regard to damage caused to highway surfaces and grass verges by vehicles.

Reasons

6. The main issues in the ground (a) appeal are; first, the potentially damaging effect on highway conditions that would result from further heavy goods vehicle movements on Greens Lane and Eager Lane associated with the completion of the agricultural irrigation reservoir; and second, the effect of further heavy goods vehicle movements on the amenities of local residents.

7. The County Council have raised concerns with regard to the impact of the development on water quality, flooding, ecology and the Green Belt, within which the site is located, but consider "...that these issues could be satisfactorily addressed through...(the imposition of) suitable planning conditions".

The first issue – the effect on highway conditions

8. Greens Lane and Eager Lane are single track highways with few passing places, and photographic evidence indicates that damage is caused to grass verges and to the edges of the tarmac surfaces of the lanes when vehicles pass each other in opposite directions. Two ordinary vehicles passing each other would encroach on verges and there are other uses generating traffic on the lanes, such as an equestrian centre on Greens Lane. In this regard, it is likely that damage is caused to highway verges and edges irrespective of heavy goods vehicle activity associated with the creation of the irrigation reservoir.

9. Conditions would require there to be no more than 20 heavy goods vehicles entering and leaving the site on any day and would require the implementation of an approved traffic management plan that would ensure that heavy goods vehicles associated with the development do not pass each other in opposite directions. The Appellant estimates that the irrigation reservoir would be complete within four months of excavation works resuming. Completion of the development would increase the possibility of traffic conflict on the two lanes but taking the conditions into account it is not likely that this would have any significant impact on highway conditions. The completion of the irrigation reservoir would not therefore conflict with policy DM2 of the Lancashire Minerals and Waste Local Plan.

The second issue – residential amenity

10. Conditions would ensure that no more than 20 heavy goods vehicles would enter and leave the site on any day, and would restrict heavy goods vehicle activity to between 0800 and 1600 hours on weekdays and not at all on weekends and public holidays. There is no reason, furthermore, to doubt the Appellant's estimate that the excavation works would be completed within four months after they are recommenced. Further heavy goods vehicle traffic associated with the excavation works would cause some inconvenience to local residents and would cause some noise and disturbance but there is unlikely to be any significant adverse effects on residential amenity. The proposed completion of the irrigation reservoir would not have a significant adverse effect on the amenities of local residents.

Other matters

11. The Canal and River Trust, who are responsible for maintenance of the Leeds-Liverpool Canal, submitted an appeal representation which sets out their concerns regarding the stability of the embankment to the canal that might be threatened by further works on the appeal site. They have suggested two conditions in the event that planning permission is granted, both of which would safeguard the stability of land adjacent to the canal.

Conditions

12. The County Council has suggested eleven conditions. Suggested condition 9 is unnecessary because the Appellant does not need to import materials to the site. The other conditions meet the relevant tests and have been imposed but they have been amended and combined in the interests of clarity and precision. Suggested condition 7 has also been amended to further restrict the hours within which heavy goods vehicles would enter and leave the site; the hours are likely to reflect the operational hours of the Appellant's contractors.

13. Condition 1 will ensure that the development is completed within a reasonable timescale, and condition 2 will ensure that the development is carried out in accordance with approved plans and details. Condition 3 is required to control the extent of excavation works and to protect residential amenity, condition 4 is in the interests of the character of the area, and conditions 5 and 6 are required to protect highway conditions. Conditions 7 and 8 are required to protect the amenities of local residents, condition 9 is required to prevent pollution of ground water, and conditions 10 and 11 are those suggested by the Canal and River Trust and are necessary to safeguard the stability of the canal embankment.

Conclusion

14. The completion of the irrigation reservoir would not have a significant adverse effect on highway conditions or the amenities of local residents, and other concerns of the County Council and the Canal and River Trust have been addressed by imposition of conditions. The ground (a) appeal thus succeeds and planning permission has been granted for the construction of an agricultural irrigation reservoir on land off Greens Lane, Downholland, Lydiate, subject to conditions.

John Braithwaite

Inspector